REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CITY TREASURER OF MANILA, *Petitioner,*	**CTA *EB* NO. 1342** (CTA AC No. 122)
– *versus* –	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
PHILIPPINE BEVERAGE PARTNERS, INC., substituted by COCA-COLA BOTTLERS PHILIPPINES, INC., *Respondent.*	Promulgated: JUN 13 2017 4:12 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is petitioner's Motion for Reconsideration filed on January 26, 2017 with respondent's Comment/Opposition (to Petitioners' Motion for Reconsideration) (the "Comment/Opposition") filed on March 9, 2017.

On December 22, 2016, the Court *En Banc* promulgated a Decision (the "Assailed Decision") denying the Petition for Review and affirming the Decision[1] promulgated on May 8, 2015 (the

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[1] *Records, CTA AC No. 122, Decision,* pp. 145-159; penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas concurring.

"Division Decision") and Resolution[2] promulgated on July 20, 2015 (the "Division Resolution") by the Court of Tax Appeals ("CTA") Second Division (the "Court in Division"), which in turn affirmed the Decision[3] promulgated on November 18, 2013 and Order[4] promulgated on July 4, 2014 of the Regional Trial Court of Manila, Branch 47 ("RTC") in the case entitled *Philippine Beverage Partners, Inc. v. City of Manila and Liberty M. Toledo (City Treasurer of the City of Manila)*[5] granting the claim for refund of erroneously/illegally collected local business tax ("LBT") and regulatory fees of respondent Philippine Beverage Partners, Inc. ("PBPI") in the amount of Php2,424,158.93 for the first quarter of calendar year ("CY") 2007. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE,** the instant Petition for Review is **DENIED** for lack of merit. The Decision promulgated on May 8, 2015 and the Resolution promulgated on July 20, 2015 by the Second Division are hereby **AFFIRMED**.
>
> **SO ORDERED.**

Petitioner, in its Motion for Reconsideration, prays that the Court *En Banc* reconsider, reverse, and set aside the Assailed Decision, and order respondent to pay the deficiency taxes for CYs 2006 and 2007 in the amount of Php9,071,298.78 or, for the sake of equity, the amount of Php6,647,139.85 after deducting respondent's claim for refund in the amount of Php2,424,158.93. Petitioner argues that the Assailed Decision should be reconsidered based on equity and fair play as respondent has not been truthful in declaring its gross income by providing petitioner with its Audited Financial Statements ("AFS") for CY 2007, which is the basis for local business taxes, fees, and charges for CY 2007. According to petitioner, respondent has the duty to provide its AFS whenever it applies for renewal of its business permits and licenses, but respondent has never submitted the same in order to evade the payment of correct local taxes, fees, and charges. For respondent's failure to provide its AFS, petitioner posits that respondent should be held liable for the underpayments in its business tax payments for CYs 2006 and 2007. In addition, petitioner contends that equity and fair play dictate that petitioner should be allowed to offset the tax refund granted by the courts with the total tax deficiencies for the two years. Finally, petitioner argues that the

[2] *Records, Resolution*, pp. 185-188.
[3] *Id., RTC Decision*, pp. 24-34; penned by Presiding Judge Paulino Q. Gallegos.
[4] *Id., RTC Order*, pp. 35-37.
[5] Docketed as Civil Case No. 07-116880.

assessments for CYs 2006 and 2007 prescribed due to the RTC's actions.

Respondent, on the other hand, counters that petitioner's Motion for Reconsideration is based on the issue that has already been repeatedly considered by the courts, and that petitioner did not raise any new argument to refute the rulings of the courts. Accordingly, respondent prays that the Court *En Banc* deny the Motion for Reconsideration for utter lack of merit.

After a careful review of the grounds raised in the Motion for Reconsideration as well as the counter-arguments raised in the Comment/Opposition, the Court *En Banc* finds no new matters or arguments which were not considered in the Assailed Decision. Petitioner failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court *En Banc*'s findings in the Assailed Decision. Consequently, the Court *En Banc* finds petitioner's Motion for Reconsideration devoid of merit. Nevertheless, the Court *En Banc* will expound on the arguments raised, if only to reinforce the discussion in the Assailed Decision.

Petitioner accuses respondent of tax evasion due to the latter's failure to submit its AFS when it applies for renewal of its business permits and licenses each year.

The Court *En Banc* finds such accusation unfair and unfounded because notwithstanding such alleged failure on respondent's part, petitioner was still able to assess respondent the LBT due for the previous years' gross sales.[6] If no AFS was ever submitted by respondent, as petitioner claims, what then could have been the basis for the amounts indicated in the Statement of Account ("SOA")[7] under Bill No. 012007-33025 issued by petitioner in favor of PBPI for LBT and regulatory fees? Further, if petitioner truly required the submission of respondent's AFS, petitioner had options available to it to enforce such requirement (*e.g.*, petitioner could have refused to issue the local permits and licenses and/or to approve the renewal of respondent's business permits and licenses). Petitioner cannot be allowed to thwart respondent's claim for refund of erroneously/illegally collected LBT and regulatory fees based on amounts petitioner itself arrived at as evidenced in the SOA petitioner issued.

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[6] *See Rollo, CTA EB No. 1342*, pp. 85, 134-147.
[7] *Rollo*, p. 85.

Petitioner also argues that the assessments for CYs 2006 and 2007 prescribed due to the RTC's actions. Specifically, petitioner claims the following:

> 3. It was the trial court which ordered private respondent to submit its AFS to the court. After receipt thereof, the trial court ordered herein petitioner to comment thereto. Petitioner filed its comment finding herein private respondent liable for tax deficiency for the years 2006 and 2007 amounting to P[hp]9,071,298.78 which findings, based on newly discovered evidence on motion for reconsideration, were totally ignored by the lower court through technicalities in its Decision dated November 18, 2013, more than six (6) years upon the filing of the Complaint on March 8, 2007. This led to the prescription of assessment for the years 2006 and 2007. . .[8]

Section 194[9] of the Local Government Code of 1991, as amended (the "1991 LGC")[10] provides for a period of five (5) or ten (10) years, depending on the existence of fraud or intent to evade tax, for assessment of local taxes, fees, or charges, subject to the suspension of the running of said prescriptive period in case, among others, the treasurer is legally prevented from making the assessment.

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[8] *Rollo, Motion for Reconsideration*, p. 228.

[9] *Section 194 of the 1991 LGC* provides:

> Sec. 194. *Periods of Assessment and Collection.* - (a) Local taxes, fees, or charges shall be assessed <u>within five (5) years</u> from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: *Provided,* That taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.
>
> (b) <u>In case of fraud or intent to evade the payment</u> of taxes, fees, or charges, the same may be assessed <u>within ten (10) years</u> from discovery of the fraud or intent to evade payment.
>
> (c) Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period: *Provided, however,* That taxes, fees or charges assessed before the effectivity of this Code may be collected within a period of three (3) years from the date of assessment.
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> (d) <u>The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which</u>:
>
> > (1) <u>The treasurer is legally prevented from making the assessment of collection</u>;
> >
> > (2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and
> >
> > (3) The taxpayer is out of the country or otherwise cannot be located. (Underscoring ours.)

[10] An Act Providing for a Local Government Code of 1991, Republic Act No. 7160 (1991).

As applied to the present case, the Court *En Banc* holds that the pendency of the proceedings at the RTC is not such an instance which will suspend the running of the prescriptive period for assessment of local taxes, fees, or charges. Considering more than five (5) years has already lapsed from the dates when the LBT for CYs 2006, and 2007 were due, petitioner correctly concluded that the same has already prescribed.

Thus, for the foregoing reasons, the Court *En Banc* finds no cogent reason to disturb its findings in the Assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Separate Opinion)
CATHERINE T. MANAHAN
Associate Justice

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COURT OF TAX APPEALS
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CASTAÑEDA, JR.,
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RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

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SEPARATE OPINION

MANAHAN, J.:

With due respect, I respectfully manifest my reservations on the Resolution affirming the decision of the Court En Banc which upheld the decision of Branch 47 of the Regional Trial Court of Manila (hereinafter referred to as "RTC Manila") granting the claim for refund of local business taxes (LBT) of herein respondent Philippine Beverage Partners, Inc., substituted by Coca-Cola Bottlers Philippines, Inc. (hereinafter referred to as "PBPI").

Contrary to the findings of RTC Manila that the subject controversy partakes of the nature of a claim for refund of LBT under Section 196 of the Local Government Code ("LGC"), I believe that this is a case involving an LBT assessment issued by the City

Treasurer of Manila ("City Treasurer") and a protest filed against it by PBPI under the provisions of Section 195 of the LGC.

The facts clearly show that the controversy began when the City Treasurer issued a Statement of Account under Bill No. 012007-33025 dated January 17, 2007 indicating the amount of LBT to be paid by PBPI for the first quarter of 2007. [1] The so-called Statement of Account was a result of PBPI's application for renewal of business permit where businesses operating in a certain locality are required to accomplish annually on or before January 20.[2] The renewal process necessitates the payment of LBT, if applicable, as a condition for the issuance of the Mayor's Permit or what is commonly called the business permit.

Records also show that PBPI did not agree with the amounts appearing in the Statement of Account hence it filed a letter protest on January 19, 2007 (attached as Annex "D") addressed to the defendant City Treasurer requesting that the Statement of Account be withdrawn and revised.[3]

Subsequently, PBPI made a formal tender of payment to the City of Manila on January 22, 2007, in an amount which it believes to be an accurate assessment of its LBT liabilities based on its own analysis and computation.[4]

The City Treasurer denied the request of PBPI for the withdrawal and revision of the Statement of Account in a letter dated February 2, 2007 which was received by PBPI on February 6, 2007.[5]

In order to meet the deadline for the payment of LBT and other regulatory fees, PBPI was constrained to pay the total amount of Php2,930,239.22 as indicated in the challenged Statement of Account.[6]

On March 2, 2007, PBPI filed a written claim for refund in the amount of Php2,930,239.22 with the City Treasurer in the amount it alleges to be erroneously paid.[7]

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[1] Court Decision of the Third Division dated May 8, 2015, page 27, Rollo.
[2] Section 167, Local Government Code.
[3] Court Decision of the Third Division dated May 8, 2015, page 29, Rollo.
[4] Court Decision of the Third Division dated May 8, 2015, page 29, Rollo.
[5] Court Decision of the Third Division dated May 8, 2015, page 30, Rollo.
[6] Court Decision of the Third Division dated May 8, 2015, page 30, Rollo.
[7] Court Decision of the Third Division dated May 8,2015, page 30, Rollo.

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With no action on the part of the City Treasurer on its claim for refund, PBPI filed a Complaint with Branch 47 of RTC Manila titled *"Complaint for the Revision of Statement of Account (Preliminary Assessment) and for Refund or Credit of Local Business Tax erroneously/illegally collected from plaintiff Philippine Beverage Partners, Inc. by the City of Manila* [8] on March 08, 2007.[9]

In my humble view, the Statement of Account issued by the City Treasurer on January 17, 2007 constitutes the assessment for LBT for the year 2007 and that the letter request filed by PBPI requesting for the withdrawal and revision of the Statement of Account filed by PBPI on January 19, 2007 is the protest contemplated under section 195 of the LGC, and I quote, thus:

> "Section 195. Protest of Assessment. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges and interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment: otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer find the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

It seems to me that PBPI was fully aware that the process was one of assessment and protest as shown by the nature of the letter it filed on January 19, 2007 and the type of complaint it filed with RTC Manila identifying the document Statement of Account as a "Preliminary Assessment".

This Court is not unaware of situations where the City Treasurer of certain local government units adopt the Presumptive Income Level Assessment Approach ("PILAA") in computing the LBT of business owners for the previous year's gross receipts especially in situations where applicants submit incomplete or fail to submit financial documents to support their applications for business permits. In the case of First Planters Pawnshop, Inc. vs. City

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[8] Decision of RTC Manila Branch 47, page 59, Rollo.
[9] Complaint filed with Branch 47 of the RTC Manila, page 73, Rollo.

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Treasurer of Pasay City[10], this Court acknowledged the use of the PILAA as a collection tool which enables a local government unit to set a certain income level standard for various businesses. However, this Court in said case strictly puts a limit to its use and restricted this approach to situations where the "taxpayer is unable to provide proof of its income" and we quote:

> " The PILAA is indeed a tax collection tool which enables the local government units to set a certain income level standard for various business entities based on industry factors. However, the PILAA does not give respondent a carte blanche authority to increase the gross sales/receipts of the taxpayer within its jurisdiction and on that basis, assess the local business tax..
>
> The Court believes that the PILAA may be used by respondent in computing the local business tax <u>only if the taxpayer is unable to provide proof of its income." (underscoring ours.)</u>

In the instant case, PBPI failed to submit its audited financial statements to support its application for renewal thus compelling the City of Manila to use the PILAA in computing the total amount of its LBT for the first quarter of 2007. The resultant Statement of Account or what I believe is the "assessment" was the result of the PILAA adopted by the City Treasurer to compute the LBT of PBPI.

Unlike in the case of national internal revenue taxes, assessments issued by local government units have no fixed format and the form and manner of its issuance largely depends on the city or municipality issuing the same. As I stated earlier, the actuations of PBPI after receiving the Statement of Account reveal that it recognized the latter document as an assessment hence it promptly filed its protest.

Under the aforequoted Section 195, the taxpayer has sixty (60) days from receipt of the notice of assessment to file a protest. Within sixty (60) days from receipt of the protest, the local treasurer should decide the protest. Then within thirty (30) days from denial of the protest or from the lapse of the sixty day period, the taxpayer must appeal to the court of competent jurisdiction which in this case is the RTC.

In the instant case, PBPI received the Statement of Account or the assessment on January 17, 2007 and filed its protest on January 19, 2007. The City Treasurer denied this protest in a letter dated February 2, 2007 and received by PBPI on February 6, 2007.

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[10] CTA EB No. 501 promulgated on December 10, 2010.

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On March 8, 2007, PBPI filed the complaint with the RTC within thirty (30) days from denial pursuant to Section 195 of the LGC. Clearly, PBPI was following the process of protesting an assessment. I humbly disagree with the decision of the RTC that the remedy of PBPI (as complainant) is a claim for refund and not protest of an assessment. It compels me therefore to have misgivings on the decision of the Court En Banc and the corresponding Resolution which both affirmed the subject RTC decision.

In my view, the decisions of both the Court in Division and the Court En Banc should have delved into the issue of whether or not the assessment issued by the City Treasurer of Manila stands on firm and factual grounds instead of determining whether or not the taxpayer PBPI complied with the requisites of a claim for refund of LBT under Section 196 of the LGC. To allow the taxpayers to dictate the nature of the cause of action may have the effect of allowing them to simplify the issues to their advantage thereby negating the necessity of submitting evidence to dispute the assessment issued against them. Besides, if the LBT assessment is proven to be valid, then, the refund claim of respondent is bereft of factual and legal bases.

If treated as an assessment case instead of a mere claim for refund, I believe that the conclusion of the Court may have been different.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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